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On Dem. 24.20–23 and the So-Called ἐπιχειροτονία τῶν νόμων: Some Final Clarifications in Response to M. H. Hansen

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Summary: This short article goes back to the problem of the authenticity of the document found at Dem. 24.20–23, with wide implications for the reconstruction of Athenian *nomothesia*. Without providing a comprehensive response to M. H. Hansen’s recent KLIO article on the topic (M. H. Hansen, The Inserted Document at Dem. 24.20–23. Response to Mirko Canevaro, KLIO 101, 2019, 452–472; itself a response to a previous KLIO article by M. Canevaro), it clarifies some key issues and clears up some important misunderstandings, also providing new evidence against the authenticity of the document.

Keywords: Athenian Law, *Nomothesia*, Demosthenes

Introduction

In much of his most recent intervention on the topic of *nomothesia* and the authenticity of the document at Dem. 24.20–23,¹ Hansen reiterates arguments that he has already made, and to which I have already responded.² Our cases are there for all

¹ Hansen 2019.

² So, for instance, to my defence of the rationale of my comparisons with relevant epigraphical texts (Canevaro 2018, 78–81), Hansen responds (Hansen 2019, 456 f.) by repeating the very same arguments he made in Hansen 2016, 444–446, and to which I already responded. Against my argument (developed in detail: Canevaro 2018, 77 f.) that it is methodologically problematic, in assessing the authenticity of a document, to start from the document (suitably normalised), reconstruct the relevant procedure from it, and then look for a reading of the paraphrase that could possibly be construed to match its contents, Hansen (2019, 458) responds with assertions rather than a counterargument: “My response is that in so far as one with an open mind compares the information provided by the document with the orator’s paraphrase and with other information it makes no difference whether you start with the document and then compare with the paraphrase or whether you start with the paraphrases and compare with the document.” In the last part of his response, Hansen (2019, 464–471) proposes to deal with the particular issues with the document which I identified in Canevaro 2013a; 2013b, 80–104, and which he dis-

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to see, and I do not believe that there is need for another extensive refutation, which would just reproduce, perhaps with some further nuances, some further emphasis on particular issues, and some further evidence, positions that I have already made clear.³ It suffices to say that I am not persuaded by Hansen's new formulation of his arguments, and I am convinced that his line of argument – also in this further reiteration – is still confuted by my previous article in *KLIO* (Canevaro 2018), to which he has now replied.⁴ There is one challenge, however, which

cussed already in Hansen 2016. His replies on each of these issues are mostly just a restatement of what he already stated in Hansen 2016, to which I already responded in Canevaro 2018. There is therefore no need to repeat myself once more – readers will weigh our respective arguments. Note, however, that Hansen sometimes fails even to acknowledge that I brought new arguments in Canevaro 2018. For instance, on the arrangement of Athenian laws, Hansen 2018, 466–468 repeats his belief that an arrangement of the laws by substantive content is compatible with one by magistrates along the lines of what we read in the document (Dem. 24.20–23). Yet Hansen has nothing to say about my detailed demonstration (Canevaro 2018, 107–111) that most laws attested in the ancient sources fall under the jurisdiction of several magistrates and do not therefore fit under any one category of the document, but would end up split among several (which is impossible). The same happens again at Hansen 2019, 470 f., where his discussion does not even attempt to engage with my arguments, and is moreover contradictory: he first claims that “*Nomoi* are less meticulous than *psephismata* about recording dates”, but then argues that the copies in the Metroon (and not the *stelai*) were in fact meticulous in recording dates. As my argument does not in any way depend on the *stelai* only, to the exclusion of the copies in the Metroon, Hansen's remarks are irrelevant.

3 My arguments are found most prominently in Canevaro 2013a; 2013b, 80–104; 2018. Hansen's are found most prominently in his original treatment, Hansen 1985, and then in his original response to my analysis in Hansen 2016.

4 Note also that the issues about Aischin. 3.38–40 and the identity of the *nomothetai*, addressed now by Hansen 2019, 460–462, have been in fact discussed in detail in Canevaro – Esu 2018 (unknown to Hansen), so my position (and, implicitly, my answer to Hansen's take) can be found there: I believe it is most likely that the *nomothetai* were a specially summoned and labelled session of the Assembly (and not, as previously believed, a panel of citizens who had sworn the Judicial Oath). A further piece of evidence that confirms this reconstruction has now been brought to the table by Harris 2018, 207 f. Demosthenes (20.94) after describing in the previous paragraph the procedure for repealing contradictory laws (as I have argued in Canevaro 2016a, 19–23; 2016b, 46–48), turns to previous stages of the *nomothesia* procedure about the publication of proposals for new laws. These bills must be posted before the Monument of the Eponymous Heroes and handed over to the secretary of the Assembly (τῷ γραμματεῖ παραδοῦναι) to be read out by him in the following Assemblies (τοῦτον δ' ἐν ταῖς ἐκκλησίαις ἀναγινώσκειν), “so that each one of you may hear them multiple times and consider them at leisure (ἵν' ἕκαστος ὑμῶν ἀκούσας πολλάκις καὶ κατὰ σχολὴν σκεψάμενος) and, if they are just and useful (ἀν' ἧ καὶ δίκαια καὶ συμφέροντα), he may enact them as legislation” (ταῦτα νομοθετῇ). Here, the setting where “each one of you” hears the proposals from the *grammateus* and then “enacts them as legislation” is identified with the Assembly (ἐν ταῖς ἐκκλησίαις), which is consistent with my analysis of Aeschin. 3.38–40.

I would like to address in particular, one that looms large in his article. This challenge, he claims, proves that I am inconsistent in applying my own methodology and makes my interpretation of the events surrounding Dem. 24, allegedly, improbable. Hansen's challenge is without merit – the issue he believes he has identified with my argument simply does not exist.

Was the So-Called ἐπιχειροτονία τῶν νόμων a Set Item in the Agenda of the First Assembly of the Year?

One of the main disagreements between me and Hansen is on whether the first Assembly of the year had as one of its set items a fixed ἐπιχειροτονία τῶν νόμων – a revision of the existing laws, as it were. Hansen (2016, 451–458) holds, following the document at Dem. 24.20–23, that this 'revision' was indeed a set item in the agenda of that Assembly meeting, every year, and attempts to read various passages of Dem. 24 in such a way as to confirm that the document is correct. On the other hand, I have argued that *nomothesia* could be started at any point of the year, and, in order for one to start it, it was necessary to hold a preliminary vote in the Assembly which allowed for the proposal of new laws at a later meeting of the Assembly (with a set timescale; Canevaro 2018, 90–99). This, I argue, is what happened in Dem. 24: there was such a preliminary vote on the 11th of Hekatombaion which authorised anyone to present new proposals. Instead of following the rules about ratifying proposals for new laws after a certain interval, however, Timocrates and his friends later on the same day convinced the Assembly to pass a decree summoning the *nomothetai* for the very next day, the 12th of Hekatombaion. This was against the law, which prescribed that the *nomothetai* could be summoned only after three further Assembly meetings, during which time all new law proposals had to be publicised. But the Assembly was convinced to summon the *nomothetai* immediately for the very next day with the excuse that there were urgent measures that needed to be enacted concerning the upcoming Panathenaia.⁵ On the next day, however, Timocrates did not propose any law concerning the Panathenaia, but rather his law concerning public debtors, which Diodorus (the speaker of Dem. 24) later attacked with a *graphe nomon me epit-eideion theinai*.

⁵ For laws concerning minute financial matters, which were meant to modify the *merismos*, see IG II³ 1 327; 452; 355, now with Canevaro 2019.

One of Hansen's key arguments for his view that there was an ἐπιχειροτονία τῶν νόμων as a fixed item on the agenda of the first Assembly of the year is that, apparently, Demosthenes makes clear that the preliminary vote opening the *nomothesia* procedure on the 11th was not preceded by a *probouleuma*. This, Hansen claimed, shows that this so-called ἐπιχειροτονία τῶν νόμων was indeed a fixed item in the agenda, otherwise a *probouleuma* would have been necessary (Hansen 2016, 454–456). I countered at Canevaro 2018, 90–92 that there is in fact no evidence of the absence of a *probouleuma* authorising the preliminary vote of the 11th, and that the evidence that Hansen cites – Dem. 24.48 – does not in fact refer to the meeting of the 11th of Hekatombaion, but rather to the enactment by the *nomothetai* of the law of Timocrates on public debtors on the 12th. We know that there was no *probouleuma* for that law – Demosthenes is adamant that the presentation of that law was illegal and neither was there a *probouleuma* nor did Timocrates follow the prescribed timescale – but this tells us nothing about whether there was a *probouleuma* authorising the *epicheirotomia* of the 11th. Hansen's assumption that there was no *probouleuma* is based on his misreading of this passage, which refers instead to the meeting of the following day.

In the core section of his response, Hansen (2019, 459) holds that my criticism of this key argument of his is unfounded. Hansen's response goes like this: he claims that my attribution of these events to the meeting of the *nomothetai* of the 12th is due to my acceptance of Blass' emendation of καθίξεσθαι (“to convene a meeting”) of the manuscripts into κατέξεσθαι (“to sit down”, “to attend a meeting”). He writes (Hansen 2019, 459):

“This interpretation of the passage is only possible because Canevaro prefers the reading κατέξεσθαι (to sit down, to attend a meeting viz. the session of *nomothetai* on the 12th). But that is an emendation suggested by Blass. All manuscripts have καθίξεσθαι (to convene a meeting), and that is retained in the new OCT of Dils. Thus the proper interpretation of the passage διαπραξάμενος μετὰ τῶν ὑμῖν ἐπιβουλευόντων καθίξεσθαι νομοθέτας διὰ ψηφίσματος ἐπὶ τῇ τῶν Παναθηναίων προφάσει is: ‘Because in collusion with those who plot against you he had managed to convene the *nomothetai* through a *psephisma* allegedly about the Panathenaia’ viz. the decree proposed and carried on the 11th. Contrary to his second methodological principle Canevaro accepts an emendation to the reading in all manuscripts.”

The problem with all this is that my argument at Canevaro 2018, 90–92 (answering Hansen's own argument of Hansen 2016, 454 f.) is not about Dem. 24.26 and 29, but about Dem. 24.45–48, and 48 in particular. Hansen must have been confused – neither κατέξεσθαι nor καθίξεσθαι are found at all at Dem. 24.45–48, and there can be no doubt whatsoever that the whole discussion there refers to the session of the *nomothetai* on the 12th that approved the law of Timocrates on

public debtors – one of Demosthenes' key arguments was in fact that the *nomothetai* were summoned, on the 11th, immediately for “tomorrow”, which was against the law. There was no *probouleuma* for that law, but the passage says nothing about how the *epicheirotomia* of the 11th was authorised. Hansen's claim that my argument at Canevaro 2018, 90–92 relies on accepting an emendation (“contrary to his own methodological principles”) is therefore moot – I do not accept any emendation at pp. 90–92, the passage I am discussing there (and which he discussed at Hansen 2016, 454 f.) has no such emendation, so Hansen's ‘clinchier’ is non-existent. Hansen (2019, 464) later reiterates:

“On page 90 there are problems with Canevaro's interpretation. According to Canevaro the passage I ‘misunderstand’ and ‘read out of context’ is Dem. 24.48. But in the next sentence ‘in the passage’ refers to Dem. 24.29, and it is from that passage I infer that the *epicheirotomia* was a fixed item on the agenda”.

No, Canevaro 2018, 90–92 deals specifically with Hansen 2016, 454 f., which discusses Dem. 24.48, and “in the passage” (Canevaro 2018, 90) refers to what it states it refers to: Dem. 24.48. It refers to Dem. 24.48 because that is what Hansen 2016, 454 f. (*pace* Hansen 2019, 464!) built his argument on (about the lack of a *probouleuma* proving that the *epicheirotomia* was a fixed item on the agenda). Hansen (2016, 454 f.) originally wrote:

“So the *epicheirotomia* – held in this case on Hekatombaion 11 – was a *diacheirotomia* about all laws. But was it an obligatory item on the agenda for this *ekklesia*? or a vote held whenever the Athenians had to legislate on any matter? Later in the speech (48) Demosthenes tells the jurors what Timocrates ought to have done [...]”

He then proceeded to summarise Dem. 24.48 – *pace* what he claims now, Hansen did not mention Dem. 24.29 at all at Hansen 2016, 454 f. (the argument I refute in Canevaro 2018, 90–92), and the whole section was about Dem. 24.48. And rightly so: Dem. 24.29 does not mention the Council (it just says that no one on the 12th presented to the *nomothetai* any bill about the Panathenaia, which was what the *nomothetai* had been allegedly summoned about), whereas it is at Dem. 24.48 that we learn that Timocrates had not brought a *probouleuma* introducing the law (on public debtors) he then had the *nomothetai* enact on the 12th. So no, it is not true that “on page 90 there are problems with Canevaro's interpretation”. My objection to the authenticity of the document remains intact: the document implies that *nomothesia* could take place only in the first prytany, but the evidence of Demosthenes' “Against Leptines and Against Timocrates”, which is confirmed by the evidence of inscriptions, demonstrates that *nomothesia* could take place at any time during the year.

My Alleged Acceptance of an Emendation and Its Alleged Methodological Consequences

Do I in fact accept the emendation of καθίξεσθαι into καθέξεσθαι anywhere else? Hansen goes back to this issue at Hansen 2019, 462f. Here we are really talking about passages where the verb καθέξεσθαι/καθίξεσθαι is found: Dem. 24.26 and 29. Hansen (2019, 462) quotes a long passage from Canevaro 2018, 203 and claims: “I hold that Canevaro’s attempt to associate these three passages [Dem. 24.26, 28, 29] with the session of the *nomothetai* on Hekatombaion 12 is misleading.” This is puzzling, as I do no such thing – my argument is in fact the opposite: I claim that “all [three passages are] referring to different stages of the procedure” (Canevaro 2018, 103). I argue that Dem. 24.29 refers to the actual session of the *nomothetai* on the 12th (cf. καθεζομένων, which means that the *nomothetai* were actually sitting, as Hansen also holds), while Dem. 24.28 refers to the actual decree of appointment of the *nomothetai* (of the 11th). As for Dem. 24.26, Hansen (2019, 462) writes: “Canevaro has καθέξεσθαι νομοθέτας referring to the session of *nomothetai* on 12 Hekatombaion, whereas all manuscripts have καθίξεσθαι referring to the summoning of the *nomothetai* on 11 Hekatombaion.” This completely misrepresents my discussion: I explicitly attribute the events of Dem. 24.26 to the debate about the summoning of the *nomothetai* of the 11th. While I do mistakenly quote καθέξεσθαι νομοθέτας διὰ ψηφίσματος ἐπὶ τῇ τῶν Παναθηναίων προφάσει (“to sit in”, with Blass’ emendation) within brackets, I do make clear that my reading of this passage is in fact καθίξεσθαι (without emendation), as I write: “The first passage, Demost. or. 24.26, also clearly refers to the debate that led to the enactment of the decree of appointment of the *nomothetai*.” I am clearly commenting on a verb meaning “to summon”, “to convene”, and while my quotation mistakenly reproduces Blass’ emendation (an error for which I apologise), my argument does not depend on it, but in fact on the reading of the manuscripts.

Thus, *pace* Hansen, I do not read Dem. 24.26 to refer to the meeting of the *nomothetai* of the 12th. I do the opposite: I state that it refers to the summoning of the *nomothetai* on the 11th, which occurred illegally right after the *epicheirotonia*, without waiting the prescribed interval (“after three Assembly meetings”). Hansen’s claim that I accept the emendation is false. His implication that my argument depends on this emendation is unfounded: my argument depends on not accepting the emendation.

My points therefore stand that, first, there is no evidence that the *epicheirotonia* of the 11th was held without a *probouleuma* authorising it (Dem. 24.45–48 refers to the next day); second, that Dem. 24.26, 28 and 29 do not at all prove that the law about the Panathenaia was discussed during the *epicheirotonia* (as

Hansen proposes). Dem. 24.26 and 28 are in fact clear that this was only discussed when the topic was the actual summoning of the *nomothetai*, still on the 11th, but at a later stage of the Assembly meeting – illegally because according to the law this discussion could not occur straight after the *epicheirotomia*, but only after three Assembly meetings.

After pointing out these misunderstandings and misrepresentations, I want to conclude with one important methodological point that Hansen misunderstands (or misrepresents). In discussing my alleged (yet non-existent, as we have seen) reliance on an emendation, he repeatedly makes a point of stating that accepting such an emendation goes against my own methodological principles. The charge is one of inconsistency, which would implicitly invalidate my entire analysis. Note, however, that my methodological principle is not that texts should not be emended – that would be utterly ridiculous. Texts do get corrupted, and often need emending – Hansen knows this, I know this, and everyone knows this. My methodological point was rather that, in analysing an inserted document in order to figure out whether it is authentic or not, we should refrain from emending it until after we have decided whether it is authentic; otherwise we would just be emending the document into authenticity. We cannot, that is, assume that problems in a document are due to textual corruption, as they could equally be due to the fact that the document is a clumsy forgery (Canevaro 2013b, 34; 2018, 74, n. 8). All this pertains, of course, to inserted documents, not to the texts of the speeches themselves! Hansen claims repeatedly that I accept an emendation (which I do not!) against my own methodological principle, but that emendation (which I do not accept!) is not within a document, so it has nothing to do with my methodological principle.

Conclusion

I hope these short remarks may help clarify a few key points of my analysis and of my method which, frankly, I thought were already clear enough. I have now felt that I had to clarify them further, given Hansen's apparent misunderstandings. Readers will make up their mind about this document and the *nomothesia* procedure, weighing my arguments against Hansen's. I just hope they will weigh my arguments as they actually are, and not as Hansen (mis)represents them in his most recent intervention.

Appendix: Some Further Notes on μετὰ τὰ ἱερά

In his latest contribution, Hansen continues to claim that the phrase μετὰ τὰ ἱερά⁶ must mean “after the sacred business” and that this “sacred business” is the discussion of three items about sacred matters mentioned at Arist. Ath. Pol. 43.4–6.⁷ He objects to the interpretation of Harris, who translates the phrase μετὰ τὰ ἱερά as “after the sacrifices” and identifies τὰ ἱερά as the sacrifices that preceded every meeting of the Assembly.⁸ His main objections are two. First, he notes that in IG II2 74 l. 9 we find the phrase μ[ε]θ’ ἱερά. The objection is weak: if one is going to determine the meaning of a phrase, one should study its normal form, not a single unusual form, which may have been either a mistake or an abbreviation of the full and standard form of the phrase. Second, Hansen comments on the phrase μετὰ τὰ ἱερά καὶ τὰ βασιλικά which we find in certain Hellenistic inscriptions.⁹ Because Hansen believes that the phrase must refer to “discussion of sacred matters”, he argues that τὰ βασιλικά must refer to discussion of the king’s business. This argument is only as strong as the assumption on which it is based. On the other hand, if we reject Hansen’s assumption that τὰ ἱερά must be a discussion of sacred business, then we can interpret the phrase τὰ βασιλικά in another way. In fact, we know that several Greek city-states awarded honours “equal to those of a god” (IG XII, 7 506: Amorgos for King Ptolemy – third century BCE; SEG 41.75: Rhamnous for King Antigonus – 262–240 BCE) to Hellenistic kings and that one of these honours was a sacrifice (IG XII, 7 506 ll. 54–56). Nothing then prevents us from identifying τὰ βασιλικά in these inscriptions with sacrifices to kings preceding every meeting of the Assembly just as there are sacrifices to the gods. And, in fact, this interpretation is the only one compatible with the fact that the ambassadors of Hellenistic kings (as well as of Rome from the second century BCE) are often granted in the Greek *poleis* priority in addressing the Council and the Assembly precisely with the formula πρώτῳ (or πρώτοις) μετὰ τὰ ἱερά καὶ τὰ βασιλικά (or μετὰ τὰ ἱερά καὶ Ῥωμαίους *vel sim.*).¹⁰ Why would royal ambassadors be granted the right to speak after discussion of “sacred business” and “royal business”? One would expect royal ambassadors to speak, at the very least, when “royal business” is discussed, not after it! And what kind of priority would that be

⁶ I would like to thank Edward Harris for pointing out to me the problem with Hansen’s interpretation of *meta ta hiera* with regard to privileges for foreigners and for drawing my attention to the decrees praising the *prytaneis* for performing sacrifices before meetings of the Assembly.

⁷ Hansen 2019, 464.

⁸ Harris 2006, 91.

⁹ Cited in Canevaro 2018, 105 f.

¹⁰ See on these grants of priority Giovannini 1978, 47; Wallace-Hadrill 1990, 167.

anyway? Conversely, if we understand μετὰ τὰ ἱερὰ καὶ τὰ βασιλικά as “after the sacrifices to the gods and to the king”, this would actually give royal ambassadors priority: they would have the privilege of addressing the Assembly first, straight after the sacrifices.

There are in fact two further objections to Hansen’s interpretation of the phrase. The first is that the phrase often occurs in grants of privileges to foreigners (e.g., IG II² 107, ll. 15–16; IG II³ 1 883, ll. 13–16: end of the fourth century BCE): meritorious foreigners are given the privilege to speak in the Assembly straight μετὰ τὰ ἱερὰ. Now if Hansen’s view is correct, this would mean that foreigners could not address the Assembly about their requests at any meeting of the Assembly, but only at the two meetings at which there was a discussion of the sacred matters. If they had an urgent request, they could not present their request immediately, but would have to wait until the appropriate meeting of the Assembly. This certainly makes no sense and would have made the privilege rather worthless. On the other hand, if one interprets the phrase as Harris does, this would mean that these honoured foreigners would be able to present their requests at any meeting of the Assembly right after the sacrifices were performed, that is at the very beginning of the Assembly. They could therefore present their requests in an emergency as soon as possible – this would be an actual privilege.

The second objection to Hansen’s view is the evidence of several Attic inscriptions. I give two examples. The first is IG II³ 1 900 (273/2) ll. 4–8:

περὶ ὧν ἀπαγγέλλουσιν οἱ πρυτάνεις τῆς Ἀντιοχίδος ὑπὲρ τῶν ἱερῶν ὧν ἔθουον τὰ τε πρὸ
[τῶν ἐκκλησιῶν τῶι Ἀπόλλωνι τῶι Προστατηρίῳ καὶ τοῖς ἄλλοις θεοῖς, οἷς πάτριον ἦν,
ἔθυσαν δὲ καὶ τὰ Στήνια παρ’ αὐτῶν τεῖ Δήμητρι καὶ τεῖ Κόρει ὑπὲρ τῆς βουλῆς καὶ τοῦ
δήμου.

The second is IG II³ 1 887 (279/8) ll. 7–11:

[ὕπερ] ὧν ἀπαγγέλλουσιν οἱ πρυτάνεις τῆς Πανδιονίδος ὑπὲρ τῶν ἱερῶν ὧν ἔθουον τὰ τε
πρὸ τῶν ἐκκλησιῶν τοῖς θεοῖς] οἷς πάτριον ἦν· ἔθυσαν δὲ καὶ ὑπὲρ τῆς τε βουλῆς καὶ τοῦ
δήμου [τὰ ἄλλα ἱερὰ κατὰ τὰ ψηφίσματα τοῦ δήμου τοῦ] Ἀθηναίων.

In both inscriptions the sacrifices (τῶν ἱερῶν ὧν ἔθουον) are those which the *prytaneis* perform before meetings of the Assembly (πρὸ τῶν ἐκκλησιῶν), that is, before every meeting of the Assembly.¹¹ This evidence is decisive against Hansen’s interpretation of the phrase.

¹¹ For other examples see IG II³ 1 880 (283/2) ll. 9–10; 888 (279/8) l. 5; 910 (271/0) ll. 8–9; 1006 (250/49) ll. 7–10; 1029 (234/3) ll. 8–12. The phrase is plausibly restored in IG II³ 1 946 (ca. 280) ll. 5–6; 952 (ca. 280–265) ll. 4–5; 1036 (ca. 250–240) ll. 2–4; 1066 (ca. 230) ll. 5–7.

Anmerkung der Redaktion: Die Zeitschrift KLIO bietet gerne Raum für Forschungskontroversen, die allerdings auch einen Schlusspunkt finden sollen. Die Herausgeber betrachten deshalb diese Debatte als abgeschlossen.

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